

HOUSE BILL 118
By Harmon

AN ACT to amend Tennessee Code Annotated, Title 65
and Title 67, relative to railroads.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. The Tennessee code commission is directed to change references to the department of transportation to the Tennessee regulatory authority in the provisions of Tennessee Code Annotated, Title 65, Chapter 3, except as may be specifically provided hereinafter, in order to effectuate the transfer of certain duties, responsibilities, and powers of the department of transportation pertaining to railroads to the Tennessee regulatory authority.

SECTION 2. Tennessee Code Annotated, Section 65-3-202, is amended by deleting the section in its entirety and by substituting instead the following:

Section 65-3-202.

(a) The inspection, control and supervision fees provided for in this part shall be collected by the Tennessee regulatory authority. Such fees, when collected, shall be deposited in the state treasury but shall be kept in a separate account, to be known as the "railroad account," and the funds so raised shall thus be segregated on a fiscal year basis. Effective June 30, 2005, the balance in the railroad account is to reflect all fees collected for the fiscal year and should reflect any payments authorized by this chapter for this fiscal year and each year thereafter. The same accounting procedures used by the department of finance and administration for the determination of other reserve fund balances shall be applicable to the railroad account balance.

(b) The Tennessee regulatory authority is authorized to draw upon the railroad account as necessary to fund the salaries and wages of such persons as may be

employed by the authority to perform the duties and exercise the powers conferred by this chapter upon the authority, as provided in § 65-3-205.

SECTION 3. Tennessee Code Annotated, Section 65-3-205, is amended by deleting that section in its entirety and by substituting instead the following:

Section 65-3-205.

The Tennessee regulatory authority is empowered to employ such inspectors, engineers, attorneys, accountants, or other employees, and assign to them such duties as shall be necessary to enable the authority to fully perform the duties, and to exercise the powers conferred by this chapter upon the authority, subject to its review. The provisions of this section shall not be construed to authorize or to permit such attorneys to file any action or to otherwise appear before any state or federal court without prior approval of the attorney general and reporter.

SECTION 4. Tennessee Code Annotated, Section 65-3-207, is amended by deleting such section in its entirety and by substituting instead the following:

Section 65-3-207.

(a) The inspection, control and supervision fees generated by this part shall be used only to support railroad-related programs administered by the Tennessee regulatory authority pursuant to this act, and other railroad-related programs administered by the department of transportation, and assessment functions performed by the comptroller of the treasury under title 67, chapter 5, part 13.

(b) The comptroller shall perform an annual audit of all expenditures of the railroad account which shall be presented to the senate and house transportation committees by February 15 of each year.

(c) Upon the reserve amount in the railroad account reaching two hundred thousand dollars (\$200,000), such sum shall be transferred to the department of transportation for use in the Section 130 Grade Crossing Program. The house and senate transportation committee shall review the Section 130 Grade Crossing program at least once every three (3) years. Thereafter, any reserve amount in the railroad account each fiscal year shall be expended toward implementing and funding a program

to educate the motoring public about railroad crossing safety at the sole discretion of the Tennessee regulatory authority. After January 1, 2008, no funds from the railroad account shall be expended pursuant to this subsection without review and approval of the senate and house transportation committees.

SECTION 5. Tennessee Code Annotated, Section 65-4-105(a), is amended by deleting the subsection in its entirety and by substituting instead the following:

(a) In addition to the power conferred by this chapter on the authority, it shall possess with reference to all public utilities within its jurisdiction all the other powers conferred with reference to railroads regulated by the Tennessee regulatory authority or transportation companies regulated by the department of safety as provided by chapters 3 and 5 of this title.

SECTION 6. Tennessee Code Annotated, Section 65-6-207, is amended by deleting the section in its entirety and by substituting instead the following:

Section 65-6-207.

The Tennessee regulatory authority is directed to enforce compliance with this part; provided, that the authority shall have the power and the duty to prescribe and authorize a vertical or side clearance less than the minimum herein required in particular cases when, on application therefor, after notice posted at the railroad station nearest the place affected, and after hearing if requested, the authority may find a reasonable necessity or justification for such action; and provided further, that this part shall not apply to temporary forms, supports, falsework, bracing, etc., used only during and in the construction or repair of any underpass or overpass for a street, road or highway.

SECTION 7. The Tennessee code commission is directed to change references in title 65, chapter 12, to the department of transportation to the Tennessee regulatory authority and to transfer to an appropriate title in Tennessee Code Annotated the provisions of title 65, chapter 12, in order to effectuate the transfer of certain duties, responsibilities, and powers of the department of transportation to the Tennessee regulatory authority.

SECTION 8.

(a) Notwithstanding any provision of law to the contrary, employees of the department of transportation charged with the responsibility of regulating and enforcing the provisions of title 65, chapters 3, 4, 6 or 12, may be transferred to the Tennessee regulatory authority as determined by the transition team established under § 65-1-116. Any such transfer of employees shall take into account the staffing needs of the department of transportation in carrying out any of its responsibilities with respect to railroads.

(b) All reports, documents, surveys, books, records, papers or other writings in the possession of the department of transportation with respect to administering the provisions of Title 65, assigned to the Tennessee regulatory authority by this act, shall be transferred to and remain in the custody of the Tennessee regulatory authority.

(c) All leases, contracts and all contract rights and responsibilities in existence with the department of transportation with respect to the duties transferred by this act shall be preserved and transferred to the Tennessee regulatory authority.

(d) All assets, liabilities and obligations of the department of transportation with respect to the duties transferred by this act shall become the assets, liabilities and obligations of the Tennessee regulatory authority.

SECTION 9. Tennessee Code Annotated, Title 65, Chapter 1, Part 1, is amended by adding the following language as a new, appropriately designated section:

Section 65-1-116.

(a) It is the intention of the general assembly that duties, authority, personnel, and property transferred on the effective date of this act be transferred no later than June 30, 2006. Such transfers shall be subject to approval of a plan of transfer by a transition team composed of the comptroller of the treasury or the comptroller's designee, the commissioner of finance and administration or the commissioner's designee, the commissioner of personnel or the commissioner's designee, the commissioner of transportation or the commissioner's designee, and the chairman of the Tennessee regulatory authority or the chairman's designee.

(b) The commissioner of the department of personnel shall develop and present a transfer plan to the transition team for review and approval by the transition team. Such plan shall set forth the procedures under which transferred employees will be incorporated into the Tennessee regulatory authority. Such plan shall also include, but is not limited to:

(1) Analysis and determination of the workforce needs and requirements for the Tennessee regulatory authority;

(2) A detailed report of the number of employees required to operate each function transferred to the Tennessee regulatory authority. This allocation report should include the name of each employee being transferred, as well as each employee's current and proposed classification title, job description and salary;

(3) If the workforce analysis report reflects that all current employees are not necessary for the effective implementation of a program, a detailed plan of placement options for each such employee to other executive departments shall be presented; and

(4) Provisions regarding any changes in salary, rank or employment of transferred employees.

(c) Plans reviewed and approved by the transition team shall, before implementation, be reviewed and approved by both the senate finance, ways and means committee and the house finance, ways and means committee.

(d) In the event that a reduction-in-force is required as a result of the implementation of this act, the provisions of Sections 8-30-320 and 8-30-322, shall apply to all career service employees affected by the provisions of this act as such sections relate to state service seniority and order of recall.

(e) It is the intent of the general assembly that the transition team shall have full authority to resolve any questions or disputes relative to issues surrounding the transfer of employees affected by this act.

(f) The transition team shall establish the amount of funds that shall be transferred from the department of transportation to fund functions and personnel

transferred by the provisions of this act. Such team shall also establish a procedure for transferring such funds. Any transfer shall require approval of the transition team and approval by the senate finance, ways and means committee and by the house finance, ways and means committee. Budgets for the Tennessee regulatory authority shall be submitted to the department of finance and administration for inclusion in the governor's budget.

SECTION 10. Tennessee Code Annotated, Sections 65-1-114 through 65-1-115, are amended by deleting such sections in their entirety.

SECTION 11. Tennessee Code Annotated, Sections 65-1-301 through 65-1-304, are amended by deleting such sections in their entirety.

SECTION 12. All rules and regulations governing railroads included in chapter 1680-9-2 of the rules of the Tennessee department of transportation and any other rules and regulation of the former public service commission previously transferred to the department of transportation by the provisions of Acts 1995, ch. 305, in effect on the effective date of this section shall be transferred to the Tennessee regulatory authority, and assigned an appropriate new control number by the secretary of state, and shall remain in full force and effect until modified or repealed by the Tennessee regulatory authority. The Tennessee regulatory authority may promulgate rules and regulations to effectuate the purposes of this act. All rules and regulations relative to railroads filed by the Tennessee regulatory authority with the secretary of state before July 1, 2007, shall be first be presented to the railroad authorities in title 64, chapter 2, and to the department of transportation for their comments. Railroad authorities in title 64, chapter 2, and the department of transportation shall have thirty (30) days from receipt of such proposed rules for comments. After such time has expired, the Tennessee regulatory authority may proceed with the promulgation of any such rules pursuant to title 4, chapter 5.

SECTION 13. Tennessee Code Annotated, Section 65-4-102, is amended by deleting the section in its entirety.

SECTION 14. Tennessee Code Annotated, Section 65-11-107, is amended by designating the present language as subsection (a) and by adding the following language as a new, appropriately designated subsection (b):

(b) The department of transportation shall have exclusive authority to eliminate grade crossings of any railroad or interurban railway track on any public road not on the state highway system. The department shall have power, upon its own motion or upon complaint filed, after having made proper investigation, and after notice and hearing, if requested, to abolish any grade crossings of any railroad or interurban railway track on any public road not on the state highway system heretofore or hereafter established, to vacate and close that part of the roadway on such crossing abolished, and to erect barricades across the roadway in such a manner as to prevent the use of such crossing as a roadway, when, in the opinion of the department, the public necessity served by the crossing in question is not such as to justify the further retention thereof. In any event, if a grade crossing of any railroad or interurban railway track on any public road is the subject of closure proceedings, both the local governmental entity and the rail carrier shall be given formal written notice by the department before any hearing is conducted by the department.

SECTION 15. Tennessee Code Annotated, Title 65, Chapter 3, Part 1, is amended by adding the following language as a new, appropriately designated section:

Section 65-3-124.

(a)

(1) The Tennessee regulatory authority shall have authority to participate in investigative and surveillance activities with respect to particular rules, regulations, orders or standards issued under the regulatory authority of the Federal Railroad Safety Act of 1970. Inspections may be undertaken to examine:

- (A) Compliance with federal regulations on track;
- (B) Signal and train control systems;
- (C) Motive power and equipment;
- (D) Operating practices;
- (E) Hazardous material; and
- (F) Highway rail grade crossing warning systems.

(2) No regulation shall be adopted or enforced by the authority which are deemed federally preempted or which are inconsistent with federal regulations.

(b) The authority shall enter into an agreement with the federal railroad administration pursuant to which inspectors shall participate in investigative and surveillance activities concerning federal railroad safety laws and regulations pursuant to 49 CFR 212.105, and shall establish minimum qualifications and educational requirements for railroad inspector positions. The authority may enter into a state railroad safety technical training funding agreement with the federal railroad administration. Within thirty-six (36) months of the effective date of transfer of any inspector to the authority, any manager or direct supervisor of such inspector, as well as any inspectors subsequently hired by the authority, shall meet the qualifications set forth in 49 CFR 212.201. Failure of any supervisor, manager or new inspector to meet these qualifications shall disqualify that inspector from participating in the enforcement of federal regulations.

SECTION 16. The department of transportation and the Tennessee regulatory authority are directed jointly to develop, sign, and enforce a Memorandum of Understanding (MOU) to ensure that cooperation and coordination of efforts between such governmental entities result in the seamless transfer of powers, duties and responsibilities pursuant to this act.

SECTION 17. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 18. This act shall take effect July 1, 2005, the public welfare requiring it.